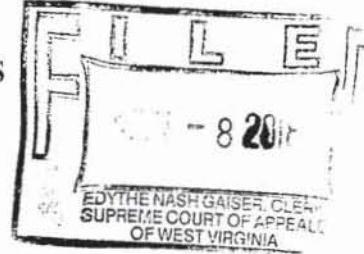


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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

No. 18-0228



THE COUNTY COMMISSION OF DODDRIDGE COUNTY,  
SITTING AS THE BOARD OF ASSESSMENT APPEALS  
AND BOARD OF EQUALIZATION,

Respondent Below, Petitioner,

v.

ANTERO RESOURCES CORPORATION,

Petitioner Below, Respondent.

AMICUS CURIAE BRIEF OF STEVEN L. PAIN,  
WEST VIRGINIA STATE SUPERINTENDENT OF SCHOOLS

PATRICK MORRISEY  
ATTORNEY GENERAL

KELLI D. TALBOTT (WVSB #4995)  
SENIOR DEPUTY ATTORNEY GENERAL  
812 Quarrier Street, Second Floor  
Charleston, West Virginia 25301  
(304) 558-8989 (phone)  
(304) 558-4509 (fax)  
[Kelli.D.Talbott@wvago.gov](mailto:Kelli.D.Talbott@wvago.gov)

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WEST VIRGINIA STATE SUPERINTENDENT OF SCHOOLS**

I.

INTRODUCTION

Comes now Steven L. Paine, the West Virginia State Superintendent of Schools, by counsel, Kelli D. Talbott, Senior Deputy Attorney General, and files this amicus curiae brief pursuant to Rule 30(a) of the West Virginia Rules of Appellate Procedure. The State Superintendent submits this amicus brief not to argue the various tax law issues that are presented and that will undoubtedly be fully briefed by the parties to this case. Instead, the State Superintendent files this amicus brief to provide important information to this Court about the substantial adverse impact that will ensue if the Circuit Court's decision is left to stand and available school funding revenues are decreased in Doddridge County and other similarly situated counties.

As the chief school officer of this State pursuant to Article XII, § 2 of the West Virginia Constitution, the State Superintendent is in a unique position to weigh in on this case and provide meaningful input on the real world impact to schools. The debate in this case over the specific legal issues may seem to some like an esoteric academic exercise. Yet, the consequences of an adverse outcome will have a direct impact on students, educators and all taxpayers and citizens in this State who value the fundamental constitutional right to an education enshrined in our Constitution.<sup>1</sup>

Because adequate education funding is necessary to ensure the delivery of that fundamental constitutional right, this case presents important questions. Indeed, as this Court held in *Pauley v. Kelly*, 162 W. Va. 672, 719, 255 S.E.2d 859, 884 (1979), “[o]ur basic law makes education’s funding second in priority only to payment of the State debt, and ahead of every other State function. Our Constitution manifests, throughout, the people’s clear mandate to the Legislature, that public education is a *prime* function of our State government.” It is in the context of this constitutional mandate that the State Superintendent files this amicus curiae brief to urge this Court to reverse the order of the Circuit Court of Doddridge County.

## II.

### BACKGROUND

The Circuit Court of Doddridge County entered an underlying order on appeal in this case that overturned the manner in which the Doddridge County Commission and the State Tax Department valued Antero Resources’ producing oil and gas wells in Doddridge County. As a result, of the Circuit Court’s order, it is the State Superintendent’s understanding that there will be a

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<sup>1</sup> West Virginia Constitution Article XII, § 1 mandates that a thorough and efficient system of free schools be provided in this State.

consequential reduction in tax revenues in Doddridge County and other oil and gas producing counties.

This reduction will directly impact the available revenues for the public schools in Doddridge and other similarly situated counties. Moreover, the reduction in tax revenues will have a statewide impact inasmuch as it will necessarily cause downward pressure on the general revenues to the State because the State will have to appropriate more general revenue dollars to ensure that affected counties can meet the minimum financial floor that is set forth in the West Virginia Public School Support Plan (PSSP), West Virginia Code §§ 18-9A-1 *et seq.*

To understand the impact, it is necessary to understand the fundamentals of the PSSP. The PSSP statutorily fixes both the State and county responsibilities for financing schools. Its purpose is to provide a basic level of support to all county school systems so that there will be an “equitable opportunity” for all children regardless of where they live. West Virginia Code § 18-9A-1. Under the PSSP, the counties are divided into four population densities based upon the number of students per square mile. The population density of each county is considered in several of the basic step allowances.

These step allowances provide a basic level of funding for educator, service personnel and professional student support personnel salaries and benefits, student transportation costs, operation and maintenance expenses, substitute and faculty senate costs, and the costs for improvement of instructional programs, technology and advanced placement programs. West Virginia Code §§ 18-9A-3, 18-9A-4, 18-9A-5, 18-9A-6, 18-9A-7, 18-9A-8, 18-9A-9 and 18-9A-10.

Once the step allowances are added up, a total basic program allowance is determined for each county. West Virginia Code § 18-9A-12. The total basic program allowance is the total

amount of funding determined by our Legislature to be necessary to provide base level resources to deliver a thorough and efficient education to the students enrolled in each county system. The total basic program allowance is then split between the State and each county based upon the portion of the total that each county has the means to contribute for their “local share.”

“Local share” is the computation of a county’s projected regular levy property tax collections for a given year. West Virginia Code § 18-9A-11. “Local share” is computed by multiplying the taxable assessed valuation of all property in the school district for the current fiscal year, as certified by the county assessor, by ninety percent of the regular levy rates for the year, as set by the Legislature. Assessed values for Tax Increment Financing (TIF) districts are subtracted from the taxable assessed valuations of each county as applicable. And, the estimated regular levy tax collections for each county are reduced by four percent for an allowance for discounts, exonerations and delinquencies and the applicable percentage for the Assessor’s Valuation Fund. An adjustment is also made for county boards of education that qualify under the Growth County School Facilities Act, West Virginia Code § 11-8-6f.

County boards of education are authorized to levy an excess levy if approved by a majority of the voters. Forty-two of fifty-five counties (including Doddridge) had such levies in place for the 2017-2018 year. Projected tax collections from excess levies are not included in the determination of “local share.”

Because the ruling of the Circuit Court of Doddridge County impacts the county’s regular levy property tax collections, it will directly impact the computation of the total basic program allowance for the County. A discussion of the particulars for Doddridge County and other counties will be set forth in the next segment of this amicus brief.

### III.

#### DISCUSSION

THE CIRCUIT COURT'S RULING WILL DIRECTLY IMPACT REVENUES TO THE SCHOOLS IN DODDRIDGE COUNTY AND OTHER SIMILARLY SITUATED COUNTIES, AS WELL AS THE GENERAL REVENUE OF THE STATE.

Based upon information provided by the State Tax Department, it is estimated that the total property tax dollars for oil and gas producing properties in some counties could be reduced by as much as fifty percent as a result of the Doddridge County Circuit Court decision. Using the State Tax Department's information, the Department of Education<sup>2</sup> conducted computations to assess the impact on Doddridge County. The estimated reduction in "local share" for Doddridge County for the 2017-2018 fiscal year is \$2,053,103. As outlined above, a reduction in the county's "local share" means that the State is responsible under the PSSP to make up the difference to meet the county's total basic program allowance. However, because the regular levy collections for Doddridge County were projected to be relatively high during the 2017-2018 year, the local share calculation for the County was reduced by \$1,502,338 so that it did not exceed the total basic foundation allowance. As a result, the Department of Education estimates that the State will be responsible for appropriating \$550,765 to Doddridge County if the Circuit Court decision stands.

Also, it is important to note that the Department of Education's computations project that due to the estimated reduction in excess levy tax collections and regular levy tax collections flowing from the Doddridge County Circuit Court decision, the Doddridge County Board of Education stands

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<sup>2</sup> Pursuant to West Virginia Code § 18-3-9, the State Superintendent is required to maintain a Department of Education at his office at the State Capitol to carry into effect the school laws, including the PSSP.

to lose approximately \$4,719,581 in overall property tax revenue that will not be made up through the PSSP or any other source. The loss of this revenue will force the Doddridge County Board of Education to make reductions in spending, particularly in those areas that are included in the County's excess levy call for spending on textbooks, educational technology, fine arts and performing arts, activity buses, vocational programs, building operations and maintenance, school health programs, 4-H programs, extracurricular programs and employee salaries and benefits.

For example, Doddridge County will likely be forced to reduce the County's local salary supplement for educators and other employees that is funded by the excess levy. The Doddridge County salary supplement was increased by ten percent during the 2016-2017 fiscal year, which provided an average annual salary increase of \$4,654 for professional employees and \$2,625 for service personnel.

The Doddridge County Board of Education is also projected to see a reduction in bond levy taxes in the amount of \$199,116 from the oil and gas industry. However, because the County's overall bond obligation will remain unchanged, the County will be required to increase the bond levy rate charged to taxpayers in order to generate the necessary amount of bond levy taxes to meet the required debt service amounts. This will increase the overall tax burden on the taxpayers in Doddridge County.

The precedent set by the Doddridge County Circuit Court order will necessarily require the State Tax Department to change the way assessed values are calculated for producing oil and gas wells in all counties to achieve uniformity. This will reduce the means that a number of counties will have to supply "local share" under the PSSP. The Department of Education's estimated statewide reduction in "local share" for all affected counties is \$12,774,015, which means that the State will

be required under the PSSP to increase the amount of State funding to the affected county boards of education out of the general revenues of this State. Unless there is an increase in general revenues through increased revenue collections or tax increases, the State will have to make budgetary cuts elsewhere in order to comply with the existing total basic program allowance set forth in the PSSP statutes.

In addition, the Doddridge County precedent will cause affected county boards of education to experience a total reduction in excess levy revenues in the amount of \$15,840,640 and an additional total reduction of \$2,381,559 in regular levy collections that will not be made up by the State through the PSSP. Like the Doddridge County Board of Education, those counties will simply have to reduce spending for things like teacher salaries, technology, and other operations in order to address the loss in revenues. This undoubtedly will have a marked impact upon the delivery of a high quality education to hundreds of students. In effect, the students and teachers in the impacted counties will become the collateral damage in this debate over the taxation of oil and gas wells.

Because of these impacts, the State Superintendent is deeply concerned about the outcome of this case and the effect upon the State's schools. The State Superintendent urges this Court to reflect upon these impacts in its decision of this case.

#### IV.

#### CONCLUSION

WHEREFORE, based upon the foregoing, Steven L. Paine, the West Virginia State Superintendent of Schools respectfully requests that this Court reverse the order of the Circuit Court of Doddridge County.

STEVEN L. PAINE, WEST VIRGINIA STATE  
SUPERINTENDENT OF SCHOOLS  
By Counsel

PATRICK MORRISEY  
ATTORNEY GENERAL

  
Kelli D. Talbott (WVSB #4995)  
SENIOR DEPUTY ATTORNEY GENERAL  
812 Quarrier Street, Second Floor  
Charleston, West Virginia 25301  
(304) 558-8989 (phone)  
(304) 558-4509 (fax)  
Kelli.D.Talbott@wvago.gov

CERTIFICATE OF SERVICE

I, Kelli D. Talbott, Senior Deputy Attorney General for the State of West Virginia, do hereby certify that a true and accurate copy of the foregoing Amicus Curiae Brief of Steven L. Paine, West Virginia State Superintendent of Schools was served on this 8<sup>th</sup> day of June, 2018, via United States mail, First Class, postage prepaid to the following:

Jonathan Nicol  
Lindsay Gainer  
Kay Casto & Chaney, PLLC  
Post Office Box 2031  
Charleston, West Virginia 25327

Brandy D. Bell  
Kay Casto & Chaney, PLLC  
1085 Van Voorhis Road, Suite 100  
Morgantown, West Virginia 26505

Craig A. Griffith  
John J. Meadows  
Steptoe & Johnson, PLLC  
Post Office Box 1588  
Charleston, West Virginia 25326

Katherine A. Schultz  
L. Wayne Williams  
West Virginia Attorney General  
1900 Kanawha Boulevard, East, Room W-435  
Charleston, West Virginia 25305

  
Kelli D. Talbott